Liszt has always to complain that the state and the learned bodies fail to support such undertakings as they do so liberally work in the provinces of history, philosophy and natural science. Prof. Gross rightly adds: "When we see the vast sums that are spent in other branches for scientific institutes, expeditions, museums and illustrations, we cannot understand why almost every aid should be denied to jurisprudence—certainly the most important subject for the maintenance and preservation of the state." That this lament is equally true in America as in Europe need scarcely be stated here.

While this work showns von Liszt to be a great scholar and compiler, in the recently published criticism of the official *"Vorentwurf zu einem Strafgesetz des deutschen Reichs"* (*"Die Reform des Reichsstrafsgesetzbuchs"*) and in the *"Gegenentwurf"* he stands at the head of those eminently practical German advocates of a modern criminal policy to whose efforts it will mainly be owing if the German people receive a penal code that corresponds to modern views within a calculable time. Under his leadership these men are fighting a battle that requires all the intellectual forces of the individual. That, in spite of his sixty years, he is one of the most untiring of them gives us the right to hope that he will still present not only Germany, but the whole civilized world with other works on which we can congratulate him, one of our foremost and fellow fighters in Germany, and all the nations of culture.

A. A.

REVERSAL OF SENTENCE WITHOUT NEW TRIAL.

There has been considerable comment on the case of *People v. Nesce,* recently decided by the New York court of appeals. The opinion in this case by Haight, J., holds that the right of a defendant to speak for himself after conviction in a capital case is one of substance, and it is reversible error for the trial court to omit, before pronouncing judgment, to ask the defendant if he has anything to say why sentence should not be pronounced against him. The trial, however, terminates with the verdict and the error may be corrected without granting a new trial by remitting the case to the trial court to proceed upon the verdict in accordance with the requirements of the law. The New York *Law Journal,* in commenting on the case, says that it represents a substantial change of attitude as to error in capital cases since the decision of the same court in *Messner v. The People,* 45 N. Y. 1, and that "the court of appeals has felt the pressure of professional and popular opinion against treating a criminal defendant as an extraordinarily privileged character

for whose escape any species of legal error or irregularity, no matter how artificial and insubstantial, must be utilized."

In the Messner case the opinion of the court, after citing authorities, said: "These and other authorities that might be cited conclusively show that it is indispensable that the record should show in capital cases that the prisoner was required to show cause, if any, why judgment should not be awarded against him, and that it is the duty of the court to hear and determine the sufficiency of such cause as much as to pass upon any other question during the trial. Indeed, this may be regarded as a part of the trial, as it is an essential prerequisite to an adjudication of the guilt of the prisoner." And a new trial was granted. In that case, however, Judge Allen was in favor of reversing the judgment and remitting the proceeding to the court of oyer and terminer to give judgment on the conviction, and he found statutory authority for such procedure in a statute providing "that the appellate court shall have power, upon any writ of error, when it shall appear that the conviction has been legal and regular, to remit the record to the court in which such conviction was had, to pass such sentence thereon as the said appellate court shall direct." The majority of the court, however, declined to adopt this view.

There would seem to be no reasonable ground for granting a new trial simply because of error in passing sentence. No error being alleged in the trial, on what ground can the verdict be set aside? The error being in the sentence, clearly the logical and reasonable thing to do is to correct the sentence, and that is as simple as it is logical. In Pennsylvania it was held by the Supreme Court in 1867 that, upon the reversal of a judgment for error in the sentence only, the appellate court itself would resentence the prisoner, and this seems to have been the practice very early, as the court in that case (*White v. Comw.*, 3 Brewster, 30) finds authority for it in a statute of 1836, which was, it says, nearly a transcript of the old act of 1722 defining the powers of the Supreme Court. In 1899 the Superior Court of Pennsylvania, in reversing a judgment for error in the sentence, said: "This error, however, does not require anything further than a reversal of the sentence, which will have no effect on the trial and conviction. The case will be sent back for another sentence."

This would clearly appear to be the better and only sensible rule, and the Nesce case shows a commendable disregard of an unreasonable precedent and the establishment of a rule clearly demanded by logic and common sense. E. L.